

CALIFORNIA COASTAL COMMISSION

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Date Filed:	3/9/05
180th-day:	9/5/05
Date of extension:	7/20/05
Length of extension:	90 days
Final Action Date:	12/4/05
Staff:	JB-SC
Staff report:	7/21/05
Hearing date:	8/10/05

COASTAL DEVELOPMENT PERMIT AMENDMENT APPLICATION

Application number3-01-015-A1 Cal Poly Pier Flowing Seawater Facility

Applicant.....California Polytechnic State University, Attn: Mike Multari

Project locationCal Poly Pier, Avila Beach Drive, San Luis Obispo County (APN 076-173-003) (See Exhibits A, B and C).

Project description.....Amend CDP 3-01-015 to include a flowing seawater facility (See Exhibits B, C and D).

Local Approval.....Port San Luis Harbor District approval of lease and use permit, June 22, 2004, (Exempt from County land use permit requirements pursuant to CZLUO Section 23.03.040(d)(8)).

File documents.....California Coastal Act; CDP 3-01-015; PSLHD lease and use permit (Resolution 04-10); Initial Study and Mitigated Negative Declaration (March 31, 2004); Unocal License Agreement (November 29, 2001).

Staff recommendation ...Approve with conditions

Summary: In 2001 the Coastal Commission approved CDP 3-01-015 changing the use of the Unocal Pier in Avila Beach from an inactive petroleum distribution facility to an educational/marine research facility operated by California Polytechnic State University (Cal Poly). Future improvements to the pier were contemplated, but specific details were not yet available. Thus, Cal Poly agreed to submit a CDP amendment when the project was more fully planned. At this time, Cal Poly is requesting an amendment to CDP 3-01-015 to add a flowing seawater facility to the pier. The project consists of ocean water intake and discharge pipes at the end of the pier and a new 1,500 square foot single-story building on the pier deck to house flowing seawater aquaria and tanks.

Due to the project's location in and over state tidelands, the standard of review for this permit is the Coastal Act. The primary Coastal Act issue raised by the project is the provision of maximum public access and recreation opportunities. As detailed in the findings of this report, Commission staff has been working with Cal Poly to explore measures that could be used to optimize public access at the pier in a manner that is compatible with research, safety, and resource protection needs.



California Coastal Commission
August 2005 Meeting in Costa Mesa

Staff: J.Bishop Approved by:

Thus, the recommended conditions of approval require the applicant to submit and implement a public access plan that maximizes public access and recreation opportunities at the pier to the satisfaction of the Executive Director. Other recommended conditions of approval ensure protection of water quality and marine resources during construction of the new facility. As conditioned, the project is consistent with the policies and Chapter 3 of the Coastal Act.

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I. Staff Recommendation on CDP Amendment



The staff recommends that the Commission, after public hearing, **approve** the proposed permit amendment 3-01-015-A1 subject to the standard and special conditions below.

Motion. I move that the Commission approve the proposed amendment to Coastal Development Permit No. 3-01-015 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Coastal Development Permit. The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.



- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

- 1. Final Plans.** PRIOR TO ISSUANCE OF PERMIT, the Permittee shall submit two full size copies of Final Project Plans to the Executive Director for review and approval. The Final Project Plans shall include demolition plans, site plans, structural plans, and elevations. The Final Plans shall include all project elements including intake and discharge pipes, railings, gates, lab facilities, signage, lighting, and drainage features. Final Project Plans shall be drawn to scale and shall be in substantial conformance with the plans submitted with this permit application (prepared by RRM Design Group, dated September 8, 2004).
- 2. Final Public Access Plan and Improvements.** PRIOR TO CONSTRUCTION OF THE NEW FLOWING SEAWATER FACILITY, the Permittee shall submit for Executive Director review and approval, a Final Public Access Plan that incorporates at a minimum the public access provisions contained in the access plan dated July 18, 2005 and attached to this report as Exhibit E, and that identifies the location, conceptual design, and materials of the proposed access improvements, including signage, parking and pedestrian facilities, benches, other necessary support facilities, etc.

WITHIN TWO YEARS OF COMMISSION APPROVAL OF THE NEW FLOWING SEAWATER FACILITY (8/10/07), all access improvements to the landside parcel (APN 076-174-010), as outlined in the Public Access Plan attached to this report as Exhibit E, and as may be further detailed in the Final Public Access Plan approved by the Executive Director pursuant to this condition, shall be implemented to the satisfaction of the Executive Director. Public access improvements to the pier identified in Action Plan Item #6 of Exhibit E shall be implemented to the satisfaction of the Executive Director prior to submittal of any proposal for new development on the pier that would require a coastal development permit. Upon completion of either the landside or pier public access improvements, the Permittee shall submit a report to the Executive Director accompanied by photographic evidence showing that all public access improvements have been implemented and that the landside parcel and/or the pier accessway is open for public use as specified in the public access plan. If the landside or pier access improvements prove infeasible, as determined by the Executive Director, the Permittee shall submit an amended public access plan that (1) removes those access improvements identified in the access plan dated July 18, 2005 that are found to be infeasible; and (2) identifies equivalent substitute public access improvements with an implementation schedule, as an amendment to this permit, unless the Executive Director determines that an amendment is not necessary. No new development on the pier that requires a coastal development permit shall be applied for by California Polytechnic State University prior to either the implementation of the public access plan approved pursuant to this condition or approval of an updated access plan as an amendment to this permit. The required completion date of this condition may be extended by the Executive Director for up to one year for good cause.



3. Construction Plan. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review and approval, a Construction Plan that specifies measures to be implemented during construction to avoid impacts to adjacent habitats, recreation areas, and water quality. Following review and approval of the plan by the Executive Director, permittee shall be responsible for implementing all elements of the approved plan. Such plan shall include the following:

- a. Construction Area.** Plans shall identify the location of the entire construction area, including equipment storage and staging locations and construction access routes. Plans shall prohibit the use of sandy beach area for construction activities and shall show that no construction materials or heavy equipment will be staged on the sandy beach. Prior to any construction activity, the permittee shall install temporary construction fencing along the limits of the construction area to prevent any construction activity from encroaching into public beach areas. Construction fencing shall be securely staked and shall be maintained in good condition during the entire construction phase of the project.
- b. Erosion and Runoff Control.** Plans shall identify all relevant best management practices (BMPs) to be implemented during construction to control erosion and runoff associated with construction activities. Plans shall include provisions for stockpiling and covering of stored materials, temporary stormwater detention facilities, and shall prohibit grading and earthmoving during the rainy season. Plans shall contain provisions for specifically identifying and protecting all nearby beach and aquatic habitat areas to prevent project-related runoff and sediment from entering the waters of the Pacific Ocean.

The Plan should make it clear that: (a) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff will be collected to settle out sediments prior to discharge from the site; (b) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment should not be allowed; in any event, this wash water should not be allowed to enter storm drains or any natural drainage; (c) concrete rinsates, if any, should be collected and they should not be allowed into storm drains or natural drainage areas; (d) good construction housekeeping should be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of materials used in the treatment process and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather); and finally (e) all erosion and sediment controls should be in place prior to the commencement of grading and/or construction as well as at the end of each day.



- c. **Material Containment.** Measures shall be implemented to prevent foreign materials (e.g. construction scraps, wood preservatives, other chemicals, etc.) from entering the sea or other state waters. A floating containment boom, netting, or functional equivalent shall be placed around all active portions of a construction site where wood scraps or other debris could enter the water. For any work on or beneath fixed decking, heavy-duty mesh containment netting shall be maintained below all work areas where construction discards or other materials could fall into the water. The floating boom and net shall be cleared daily or as often as necessary to prevent accumulation of debris. Contractors shall insure that work crews are briefed on the importance of observing the appropriate precautions, implementing these measures, and reporting any accidental spills. Construction contracts shall contain penalty provisions, sufficient to provide for the retrieval and/or clean up of improperly contained foreign materials.
- d. **Procedures for Concrete Work.** If the project requires the pouring of concrete in, adjacent to, or over the water, sound construction management methods shall be employed to prevent uncured concrete from entering harbor or other state waters. In each case involving such concrete pours in, above, or near state waters, a separate washout area shall be provided for the concrete trucks and/or tools. The washout area shall be designed and located so that there will be no chance of concrete slurry or contaminated water runoff into state waters.
- e. **Minimize Interference with Public Access.** Permittee shall also ensure that construction and demolition operations are conducted so as to minimize, to the greatest extent possible, any interference with public access to beach areas adjacent to the project site.

III. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Standard of Review

The Cal Poly pier, which extends over and into coastal waters below mean high tide, is located within the original jurisdiction of the California Coastal Commission for purposes of issuing a coastal development permit. The standard of review for development within the Commission's original jurisdiction is the California Coastal Act, specifically the Chapter 3 policies for protection of coastal resources and public access and recreation. The San Luis Obispo Certified Local Coastal Program, however, may be used for guidance. Pursuant to Section 23.03.040(d)(8) of the Coastal Zone Land Use Ordinance, public works projects where such development involves a state university and requires a



permit from the Coastal Commission and meet the requirements of Chapter 3 of the Coastal Act are exempt from County land use permit requirements. Therefore, the project is exempt from land use permitting requirements from the County.

B. Project Background

In 2001 the Commission approved CDP 3-01-015, granting permission to change of use of the Unocal Pier in Avila Beach from an inactive petroleum distribution facility to an educational/marine research facility operated by California Polytechnic State University (Cal Poly). In approving the project, the Commission found that maximum public access, consistent with public safety and resource protection, should be a required project component with the change of use of the pier, and the Commission required submittal of a public access plan when the details of the facility improvements were more developed.

In response to the requirements of CDP 3-01-015, Cal Poly submitted a public access plan that included: 1) controlled public access to the pier; 2) interpretive signage/kiosk located near the pier; and 3) enhancing existing lateral access at the base of the pier with a seating area. While the plan was sufficient to meet the timing requirements under the original permit, additional measures were needed to provide for maximum access and recreational opportunities for the public as required under the Coastal Act.

Since that time, Commission staff and Cal Poly have worked on a revised plan that optimizes public access and recreation opportunities. The most current submittal (attached as Exhibit E) builds on the previous public access plan and contains a number of additional components that will significantly improve the public's ability to access the pier and recreate in the project area.

C. Project Location and Description

The Cal Poly Pier is located off Avila Beach Drive in San Luis Obispo County (see Exhibit A). The Cal Poly pier is one of three piers located in the same general vicinity. Harford pier is located to the north and the Avila Beach pier is located to the south. Both of these piers are within walking/biking distance from the Cal Poly pier and provide fishing, strolling, boating, and in the case of the Harford pier, other related commercial activities such as shopping and dining.

The Cal Poly pier extends approximately 3,000 feet into the Pacific Ocean (see Exhibit B). The Harford and Avila Beach piers are shorter at approximately 1,456 feet and 1,635 feet respectively. The project site includes an onshore parcel of approximately 0.4 acres currently owned by Unocal, as well as the pier itself. Cal Poly has entered into an agreement with Unocal for use of the onshore parcel. The submerged tidelands under the pier are within the jurisdiction of the Port San Luis Harbor District. The Harbor District has granted the applicant a conditional use permit for the project and has approved a lease agreement with Cal Poly for use of the submerged property for a period of up to forty-nine (49) years and eleven months (Resolution No. 04-10).



Cal Poly has requested the addition of a flowing seawater facility to the pier as an amendment to the original base permit 3-01-015. The primary function of new pier facility would be education and marine research conducted through the Cal Poly Marine Sciences Department. As proposed, the flowing seawater facility would be built on the pier deck, seaward of an existing two-story building, which would remain. The new building will be one-story, wood frame, with a pitched roof. An existing metal storage shed will be removed. The new structure will require a concrete pad foundation, lighting, and fresh water sinks and hoses. The building will be used for flow-through aquaria and tanks using fresh seawater associated with university classes and research. A 200 gpm electric pump will draw water from under the pier. About two-thirds of the water is expected to be unfiltered flow-through. About one-third will be filtered before entering the new tanks. The intake itself will be screened to reduce entrapment and prevent entrainment of larger organisms and debris.

D. Issue Analysis

1. Coastal Dependent Development

a. Applicable Coastal Dependent Development Policies

Coastal Act Section 30255, states:

Section 30255 Priority of coastal-dependent developments: *Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support. (Amended by Ch. 1090, Stats. 1979.).*

b. Coastal Dependent Development Analysis

As defined by Coastal Act Section 30101, “coastal-dependent development or use” means any development or use that requires a site on, or adjacent to the sea to be able to function at all. The project is for a flowing seawater facility located on an ocean pier, to be used primarily for marine and oceanographic research, and includes seawater tanks and instrumentation that require a location on or adjacent to the sea to function. Thus, the project does qualify as a coastal-dependent development and use.

c. Coastal Dependent Development Conclusion

The Cal Poly pier flowing seawater project is consistent with Coastal Act Policy 30255, because the pier is a coastal dependent structure that will serve coastal dependent and related uses (marine and oceanographic research) and marine research facilities for use by California Polytechnic State University.



2. Public Access and Recreation

a. Applicable Public Access and Recreation Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea includes a specific finding that the development is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. Specifically, Sections 30210 through 30213, and 30220 of Chapter 3 protect public access and recreation. In particular, these policies require that:

30210: *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

30211. *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

30212(a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture will be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

(b) For purposes of this section, "new development" does not include ... (3) improvements to any structure which do not change the intensity of its use, which do not increase the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

30213: *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

30220: *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

b. Public Access and Recreation Analysis

Cal Poly is proposing to develop a flowing seawater facility at the end of the Cal Poly Pier. Because Cal Poly is a public education institution and the pier project is located over public tidelands, it is reasonable to expect that some form of access on the pier for the general public be provided. Cal Poly will be continuing to use State tidelands for its research facility, and the new development proposed likewise will use State tidelands. The pier occupies tidelands and thus inhibits access to these public waters. In addition, since public funding is being used for project, in the form of grants from the



National Science Foundation as well as from a Unocal endowment, the general public should benefit consistent with the Coastal Act directive to maximize public access and recreation opportunities with new developments.

The installation of a flowing seawater facility is consistent with the change of use of the pier for marine science research and education as contemplated by the original permit approval. The project will maintain marine organisms for teaching and research purposes and will use the process and products of their research activities to teach and educate the public about marine science and ecology. The proposed project not only includes provisions to serve the general public, but also serves the public as an educational institution that provides graduate level studies in marine science to students enrolled in the California State University system.

While public education and scientific research is an integral part of Cal Poly's mission, the applicants are reluctant to allow full, unmonitored public access on the pier, due to concerns regarding public safety risks, liability issues, costs associated with necessary facility upgrades, and the protection of nearby marine resources. Cal Poly's concerns are based in part on the fact that the current pier was historically used as an industrial pier and is not designed for public access. Physical upgrades to the pier to provide adequate public access would be costly and would require additional funding not currently available according to Cal Poly. The applicant is also concerned that ongoing maintenance would be problematic should the pier be opened up to unimpeded public use. Thus, the applicant feels that full, un-monitored use of the pier by the general public will conflict with research activities being conducted by the university.

The applicant does raise a number of legitimate concerns related to unrestricted public access on the pier. In order to provide for optimal public access at this site, three major factors must be considered including: 1) constraints related to physical improvements to the pier; 2) overall access compatibility; and 3) the location of the pier project as a priority public access area. As described below, unimpeded public access along the entire length of the pier appears somewhat problematic at this time.

First, the pier was designed for industrial purposes and is not currently conducive to pedestrian access. The pier has no separated walking areas and the narrow walkable/drivable deck creates conflicts with pedestrian and vehicular traffic. For Cal Poly to access the lab by vehicle (to carry specimens and other lab samples back and forth) there would need to be regularly spaced pedestrian "refuges" where people could step off to the side of the deck of the pier. Another option would be to construct a dedicated public access pathway to one side of the existing pier deck. This would involve breaking concrete and steel sides of the pier and designing some kind of cantilevered platforms (or some other technique) at regular intervals along the length of the pier. Additional engineering would have to be done to ensure that these new improvements can accept additional weight while also meeting current public safety, seismic and wave energy standards. The current access plan proposed by the University (Exhibit E) does contemplate providing vertical access out onto the pier subject to engineering and funding constraints (see below).

Second, overall public access compatibility issues are raised with unrestricted public access. Bringing



the general public to this area would require additional support facilities such as parking, trash, cans, traffic controls, and signs, etc. While Cal Poly supports some access to the land base of the pier, Unocal Corporation owns the parcel and permission would have to be secured. It should also be noted that portions of the land base of the pier are thought to be underlain with contaminated materials. Maintenance of this area is also an important consideration. The pier itself is operated and maintained, in part, through a \$3 million endowment from Unocal. This produces about \$135,000 of operating expenses each year. These funds may not be sufficient to provide for major improvements or significant long-term maintenance projects.

Third, the pier is located in the vicinity of extensive public access. Recognizing that the project area is located along the planned California Coastal Trail (CCT), additional public access amenities in this location would enhance the enjoyment and appreciation of the San Luis Bay waterfront. Thus, the location of the Cal Poly pier provides a unique opportunity to provide public access near and possibly out over the shoreline, as well as a public interpretive opportunity of the marine and coastal research that would be supported by the facility. That said, the public currently has access to two other piers within walking distance of Cal Poly's pier (also on the CCT route) that are wholly accessible for fishing, strolling, boating and the like. Lateral access is presently provided along Avila Beach Road, which includes a Class 2 bike path. Within five minutes walk in either direction, there is also vertical access to sandy beaches. A public marine institute facility is under construction at Avila Beach Park only a few minutes walk from the Cal Poly pier.

In response to the Coastal Act directive to maximize public access and recreation with new developments, the applicant has been working with Commission staff on a public access plan (see Exhibit E), intended to maximize public access consistent with Cal Poly's education and research goals as well as with public safety and resource protection. The current proposed public access plan includes the following components: 1) quarterly open houses where the entire pier areas would be open to the public; 2) special field trips, mini-conferences, and educational activities for schools and public organizations; 3) enhanced public access to the land at the base of the pier and vertical access onto the pier of not less than 100 feet; 4) creating new "virtual access" opportunities by providing the general public with access to data and information through the Center for Marine Sciences website; and 5) additional informational signage at the public recreational park in the town of Avila Beach.

While concerns expressed by the applicant regarding unrestricted public access must be considered, they are not insurmountable. Physical improvements could be made to the pier to allow additional public access. And access at this location would provide a different type of access over the water than would the other piers in the area (e.g. the pier is longer, affords different views of the coast, and is a different type of facility of interest to the public). Yet, within the context of the other access opportunities provided at two public piers nearby, and the significant infrastructure improvements needed to open the entire pier up to the public, the plan as most recently modified and as further conditioned by this permit is appropriate at this time (see Exhibit E). As Cal Poly plans to make additional upgrades to the marine science facility, additional public access opportunities on the pier may be required and should be explored in the future.



In order to provide maximum public access and recreation opportunities at the pier, consistent with research, safety, and habitat protection needs, approval of the project has been conditioned to require the applicant to submit a final public access plan for Executive Director review and approval prior to construction of the flowing seawater facility (Special Condition 2). This plan must include at a minimum those components identified in the submitted plan (Exhibit E). It is expected that the final plan will include additional detail on the location and design of public access facilities, including proposed parking and pedestrian facilities, signage, benches, etc. Special Condition 2 also requires full implementation of the facility upgrades at the base of the pier within two years of this permit amendment approval. Should the landside or pier access improvements outlined in the submitted plan prove infeasible, Special Condition 2 requires the applicant to submit an amended plan that provides some other type of public access (e.g. additional on-the-pier opportunities), as an amendment to the permit. Additional development on the pier would be precluded absent successful implementation of the currently proposed improvements or approval of an amended access plan by the Commission. With this condition, the project will optimize public access and recreation opportunities available at this time.

c. Public Access and Recreation Conclusion

The new flowing seawater facility at the end of the Cal Poly pier triggers the Coastal Act requirement for maximum public access and recreation opportunities. Given the physical constraints of opening up the pier to unimpeded public access, combined with the fact that a similar experience can be had at two other piers in the immediate area, it is reasonable to accept the plan submitted by the applicant, subject to further refinement and approval pursuant to Special Condition 2. As conditioned to require submittal and implementation of a plan for public access at the pier, the proposed project is consistent with Coastal Act policies related to public access and recreation. Additional future development on state lands, though, may trigger a need for additional public access opportunities.

3. Water Quality and Marine Resource Protection

a. Applicable Water Quality and Marine Resource Protection Policies

Coastal Act Section 30230, states:

30230...*Marine resources shall be maintained, enhanced and where feasible, restored...Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

30231. *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored...*



Additionally, Section 30232 requires that:

30232. ...*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

Furthermore, Coastal Act Section 30233 provides in part that:

30233...*(a) the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and shall be limited to the following: ... (1) New or expanded port, energy, and coastal dependent industrial facilities, including commercial fishing facilities; (2) maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps...(4) in open costal waters, other than wetlands,...new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities. (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

b. Water Quality and Marine Resource Protection Analysis

The pier will extend in and over open coastal waters of San Luis Bay. In the vicinity of the project site, the bay bottom is sandy with benthic fauna typical of such habitats. The environmental review prepared for the project by Crawford, Multari and Clark Associates indicates that southern sea otter and brown pelican, federally-listed threatened and endangered species, respectively, frequent nearby areas. Otters and other pinnipeds such as California sea lions use kelp beds adjacent to the pier. The pilings of the pier are habitat for numerous, typical invertebrates such as anemones, mussels, barnacles and starfish. The pier is also used for roosting birds, especially gulls and pigeons. Pigeon guillemots have also been observed roosting on the understructure of the pier.

Since the project requires work in and adjacent to open coastal waters, which could lead to potential adverse water quality and marine resource impacts, it has been conditioned to include implementation of best management practices that avoid or minimize any unpermitted discharge of liquids or construction materials into the ocean. Construction staging and storage areas will be located and managed in such a way so that project activities will not adversely impact water quality. Additionally, conditions have been placed to avoid the potential spillage of concrete into marine waters. Containment booms or other in-water methods for containing construction activities and solid waste discharge that may occur are required. As construction will be of limited duration, and construction methods have been conditioned by this permit to require use of best management practices to avoid oil spills and construction materials



from entering the water, the project is not expected to adversely affect any other marine or marine mammal species.

c. Water Quality and Marine Resource Protection Conclusion

The project has thus been designed and conditioned to protect water quality and marine resources, consistent with Coastal Act policies.

E. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. As detailed by the above findings, this project has the potential to adversely impact water quality and marine resources, and public access and recreation opportunities.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions that will avoid significant adverse effects on marine resources, and public access and recreation opportunities. Only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.

